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1350 Energy Lane
St. Paul, Minnesota 55108
Fax (612) 649-5749
MN Toll Free: 1-800-652-9747

Printed on Recycled Paper

Julie Mackenzie
Hazardous and
Problem Wastes
(612) 649-5494

STATE OF MINNESOTA
OFFICE OF WASTE MANAGEMENT

In the Matter of the Proposed
Amendment of Rules Governing
Pollution Prevention Grants Minn.
Rules parts 9205.0400 to 9205.0480

Statement of
Need and
Reasonableness

I. INTRODUCTION

The subject of this rulemaking is a set of proposed amendments to Minn. Rules pts. 9205.0400 to 9205.0480.¹ Currently, those rules establish the standards and procedures through which the Office of Waste Management (OWM) awards waste reduction grants under Minn. Stat. § 115A.154 (1990). The OWM is proposing to amend Minn. Rules pts. 9205.0400 to 9205.0480 to incorporate the pollution prevention grant program recently created under Minn. Stat. § 115D.05 (1990).

The OWM has prepared this Statement of Need and Reasonableness (SONAR) to explain its proposed rule amendments and satisfy the rulemaking requirements of the Administrative Procedure Act, Minn. Stat. ch. 14 (1990). Part II of this SONAR describes the statutory authority for the OWM to undertake this rulemaking. Part III describes the need for and reasonableness of the OWM's proposed rule amendments. Part IV addresses the Administrative Procedure Act's "small business consideration" requirement.

¹ The OWM has proposed these rules after consultation with its Hazardous waste Management Planning Council and its Pollution Prevention Task Force. These two organizations consist of citizens who provide advice to the OWM.

The Legislative Commission to Review and Reform the Rules

II. STATUTORY AUTHORITY FOR THIS RULEMAKING

The statutory authority for the OWM to undertake this rulemaking is set out in Minn. Stat. §§ 115A.06, subd. 2 and 115D.05, subd. 3(b) (1990).

Minn. Stat. § 115A.06, subd. 2 establishes general authority for the OWM to adopt and amend rules governing its programs, including the OWM's waste reduction grant program established under Minn. Stat. § 115A.154.² Minn. Stat. § 115D.05, subd. 3(b) establishes specific authority for the OWM to adopt and amend rules to administer its pollution prevention grant program.³ Together, these two statutes provide sufficient authority for the rulemaking addressed in this SONAR.

III. STATEMENT OF NEED AND REASONABLENESS

The Administrative Procedure Act, Minn. Stat. ch. 14 (1990), requires an agency proposing to adopt, amend, suspend or repeal a rule to establish the need for and reasonableness of the agency's proposed action. In general terms, this means that the agency must explain the reasons for its proposal and those reasons must not be arbitrary or capricious. To the extent that need and reasonableness may be described as separate tests, need means

² Minn. Stat. § 115A.06, subd. 2 states: "Unless otherwise provided, the office shall promulgate rules in accordance with chapter 15 to govern its activities and implement sections 115A.01 to 115A.72."

³ Minn. Stat. § 115D.05, subd. 3(b) states: "The director shall adopt rules to administer the [pollution prevention] grant program. Prior to completion of any new rulemaking, the director may administer the program under the procedures established in the rules promulgated under Section 115A.154."

that a problem exists that requires administrative attention and reasonableness means that the solution proposed by the agency is appropriate.

A. NEED FOR THE PROPOSED RULE AMENDMENTS

In 1990, the Minnesota Legislature enacted the Toxic Pollution Prevention Act. Among other things, that Act authorizes the OWM to "make grants to study or demonstrate the feasibility of applying specific technologies and methods to prevent pollution." Minn. Stat. § 115D.05, subd. 1 (1990). The Toxic Pollution Prevention Act expressly requires the OWM "to adopt rules to administer" this grant program. Minn. Stat. § 115D.05, subd. 3(b) (1990). This statutory requirement establishes the need for rules describing the procedures and standards for obtaining a pollution prevention grant.

B. REASONABLENESS OF THE PROPOSED RULE AMENDMENTS

1. Reasonableness of amending Minn. Rules pts. 9205.0400 to 9205.0480 to include pollution prevention grants.

As currently promulgated, Minn. Rules pts 9205.0400 to 9205.0480 govern the OWM's waste reduction grant program under Minn. Stat. § 115A.154. The grant program established by the Toxic Pollution Prevent Act is similar to the waste reduction grant program under section 115A.154, but the pollution prevention grant program has a somewhat broader scope and focus.⁴ The Minnesota Legislature appears to have recognized

⁴ Compare Minn. Stat. § 115A.154 (1990) which authorizes the OWM to "make grants to generators of hazardous and industrial waste . . . for studies to determine the feasibility of applying

the connection between the two statutes when it established the pollution prevention grant program.⁵ Because of this connection, the OWM proposes to integrate the two grant programs into a single set of rules.

Integrating the two grant programs into one set of rules will provide administrative efficiency for the OWM. It also will make it easier for grant applicants to understand the grant programs. Further, integrating the two programs into one set of rules will express clearly Minnesota's primary environmental objective of preventing pollution by reducing the generation of waste at the source of generation. See Minn. Stat. § 115A.02 (1990). For all these reasons, it is reasonable for the OWM to amend Minn. Rules pts. 9205.0400 to 9205.0480 to integrate into one set of rules the waste reduction and pollution prevention grants programs.

2. Reasonableness of the proposed amendments.

The reasonableness of each of the proposed amendments is addressed below.

Part 9205.0400 Scope and Authority

specific methods and technologies to reduce the generation of hazardous and industrial waste" with Minn. Stat. § 115D.05, subd. 1 which authorizes the OWM to "make grants to study or demonstrate the feasibility of applying specific technologies to prevent pollution."

⁵ See Minn. Stat. § 115D.05, subd. 3(b), through which the Minnesota Legislature expressly authorizes the OWM to administer the pollution prevention grant program under the rulemaking procedures established in Minn. Rules pts 9205.0400 to 9205.0480.

Minn. Rule pt. 9205.0400 is an introductory rule that describes the scope and authority of the grant program rules. Specifically, Minn. Rule pt. 9205.0400 states that Minn. Rule pts. 9205.0400 to 9205.0445 govern the administration of grants for hazardous waste reduction under Minn. Stat. § 115A.154.

The OWM proposes rules to amend Minn. Rule pt. 9205.0400 so that it also references the pollution prevention grant program under Minn. Stat. § 115D.05. This change is both needed and reasonable to reflect accurately the new scope of the grant programs to be administered under these rules.

Part 9205.0410 Definitions

Minn. Rule pt. 9205.0400 defines terms used in the grant program rules. The OWM proposes to amend existing definitions, repeal others, and establish new definitions. These changes are as follows:

The OWM proposes to amend the existing definitions in subp. 1 (scope) and subp. 6 (hazardous waste). In addition, the OWM proposes to define, for the first time: hazardous substance (subp. 5a); pollution prevention (subp. 16); release (subp. 17); and toxic pollutant (subp. 18). Each of these definitions concern the new scope of the grant program. The terms hazardous waste, hazardous substance and release are specifically used in Minn. Rule pt. 9205.0420, subp. 1 to describe the applicants that are eligible for a grant. The term pollution prevention is used in Minn. Rule pt. 9205.0420, subp. 2 to describe the projects that are eligible for grants. These proposed definitions are all

reasonable because they incorporate the criteria established by the Toxic Pollution Prevention Act, Minn. Stat. § 115D.05 and clarify the new scope of the grant rules.

The OWM also proposes to amend subp. 4 (chair) and to define a new term, office (subp. 10a). These two amendments are needed to reflect changes in the structure of the governmental agency administering the grant programs. When first enacted, the waste reduction grant program was governed by the Waste Management Board. Because the OWM is now responsible for governing the grant programs, it is reasonable to amend the rules to reflect this change.

The OWM also proposes to repeal definitions that are obsolete under the expanded grant program. These definitions include subps. 2 (abatement); 3 (board); 5 (generator); 8 (intrinsic hazard); 9 (local government unit); 10 (minimization); 12 (recipient); 13 (recycling); 14 (reduction); and 15 (reuse). Some of these definitions are no longer needed because they refer to a governmental agency no longer responsible for managing the grant program (i.e., board). Others are obsolete because they refer to criteria which, under the Toxic Pollution Prevention Act, are not relevant to eligibility (e.g., generator, intrinsic hazard). Other definitions are obsolete because they are no longer used in the rules (e.g., recipient). It is reasonable to repeal definitions that are no longer useful.

Finally, the OWM proposes to amend sup. 7 (industrial waste) to correct a grammatical error. Grammar corrections are reasonable because they clarify the meaning of the rule.

Part 9205.0420 Eligibility Criteria

Part 9205.0420 establishes grant eligibility criteria. The OWM proposes to amend these criteria to incorporate the grant program set out in the Toxic Pollution Prevention Act, Minn. Stat. § 115D.05. These amendments are reasonable because they clarify the scope of the grant program to be administered by the rule.

The OWM also proposes to establish a limitation on the amount of costs eligible for funding under the grant program. Subp. 3 of Minn. Rule pt. 9205.0420 would limit eligible costs to two-thirds of the total cost of the project. This cost limitation is reasonable for two reasons: First, grantees with a financial stake in a project are expected to have a greater personal interest in assuring the success of the project. Second, limiting maximum grant awards may make grant funds available for a larger number of eligible projects.

Part 9205.0430 Grant Application

Minn. Rules pt. 9205.0430 describes requirements for grant applications. The OWM proposes to amend this part to set out the procedures through which the OWM will solicit grant applications, review those applications and award grants. The proposed amendments correspond to other grant program rules administered by the OWM. By adopting grant administration rules that, where

possible, are similar to each other, the OWM enhances its efficiency and simplifies the grant process for potential applicants. Thus, the OWM's proposed amendments corresponding to its other grant procedures are reasonable. Each of these amendments is described briefly below:

The OWM proposes a new subpart 1 to describe the procedure for grant solicitation. Under this procedure, the Director of the OWM initiates the process for awarding a grant by publishing a notice in the State Register to advise eligible applicants of the availability of pollution prevention Grants.

The OWM proposes to amend subpart 2 to clarify the information an applicant must include in a pollution prevention grant application. The changes in this subpart are reasonable because they provide for the collection of information relevant to the eligibility criteria established by the grant program under the Toxic Pollution Prevention Act, Minn. Stat. § 115D.05.

The OWM proposes a new subpart 3 and 4 to describe the initial review that the OWM will make of grant applications. This review is reasonable because it will allow the director to provide grant applicants with a preliminary determination of the eligibility and completeness of the grant application. This early review also will allow applicants to provide additional information to correct any inadequacies in their initial proposals.

The OWM proposes a new subpart 5 to describe the criteria for evaluating grant applications. These criteria are reasonable

because they incorporate the statutory criteria for a pollution prevention grant. See Minn. Stat. § 115D.05, subd 3.

The OWM proposes a new subpart 6 to describe which grants will be given an award by the OWM. This procedure is reasonable because it assures that grants will be awarded to proposals that best meet the criteria set out in subpart 5.

The OWM proposes a new subpart 7, which clarifies that the OWM may decide not to award a grant if the Director of the OWM determines that no proposed project has sufficient potential to prevent pollution. This provision is reasonable because it assures that the state's limited funds will be spent only on truly worthy projects.

The OWM proposes a new subpart 8, which states that the OWM may solicit recommendations of certain groups to assist in reviewing grant applications. This provision is reasonable because it notifies prospective applicants of the possible scope of public review of their grant applications.

Part 9205.0435 Limitations

The OWM proposes a new part, 9205.0435. This new part sets out limitations on the amount of a grant award and the disbursement of grant funds. This new part is reasonable because it establishes procedures for preserving the limited state fisc.

Part 9205.0445 Grant Agreement

Minn. Rule pt. 9205.0480 currently describes the terms to be included in a waste reduction grant agreement between the state and a grantee. The OWM proposes to replace this part entirely

with a new part, 9205.0445. The new part contains grant terms that are consistent with and correspond to the grant terms set out in other grant program rules administered by the OWM. By adopting grant administration rules that, where possible, are similar to each other, the OWM enhances its efficiency and simplifies the grant process for potential applicants. Thus, the OWM's proposed amendments corresponding to its other grant procedures are reasonable. Moreover, the grant agreement requirements set out in the rules establish the basic terms required for the state to administer the grant equitably and in a financially responsible manner.

Repeal of Parts 9205.0440; 9205.0450; 9205.0460; 9205.0470; and 9205.0480

The OWM proposes to repeal Minn. Rule pts. 9205.0440 (application process): 9205.0450 (initial application review): 9205.0460 (evaluation of proposals): and 9205.0470 (award of grants). Repeal of these four parts is reasonable because these parts are superseded by the proposed amendments to Minn. Rule pt. 9205.0430.

The OWM also proposes to repeal Minn. Rule pt. 9205.0480 (grant agreement). Repeal of this part is reasonable because pt. 9205.0480 is superseded by pt. 9205.0445 (grant agreement).

IV. SMALL BUSINESS CONSIDERATION

Minn. Stat. § 14.115 (1990) requires state agencies proposing rule amendments that affect small business to consider methods for reducing their negative impact on small business.


The OWM's proposed rule amendments would revise the

procedures and criteria for awarding grants. These amendments would not create a regulatory burden on any small business. Thus, the requirements of Minn. Stat. § 14.155 (1990) do not apply.

V. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts 9205.0400 to 9205.0480 are both needed and reasonable.

Dated: March 6, 1991



Linda Bruemmer
Acting Director
Office of Waste Management

